IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 850 of 1997

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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JAYANTIBHAI GABRIALBHAI MECWAN

Versus

BACHUBHAI KESRISINH PADHYAR

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Appearance:

1. Civil Revision Application No. 850 of 1997

MR GIRISH D BHATT for Petitioner No. 1-3

MR SK BUKHARI for Respondent No. 1

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 20/08/2002

ORAL JUDGEMENT

Heard the learned advocates.

Feeling aggrieved by the judgment and order dated

23rd December, 1996 passed by the learned 2nd Extra Assistant Judge, Kheda in Civil Misc. Appeal No.80/1996 the petitioners have preferred the present Revision Application.

The matter at dispute is the right of way claimed by the petitioners through the land Survey No.2771/B belonging to the defendant. The petitioners have instituted Civil Suit No.31/1995 in the Court of Civil Judge (S.D.), Nadiad, claiming right of way through the above referred land Survey No.2771/B. Pending the said suit, the petitioners filed Application Ex.5 under Order 39 Rules 1 and 2 of the Civil Procedure Code for injunction restraining the defendant from obstructing the plaintiffs' passage through the above referred land Survey No.2771/B. The said application came to be allowed by the trial Judge on 20th February, 1996. Feeling aggrieved, the defendant preferred the above referred Civil Misc. Appeal No.80/1996, which was allowed by the appellate Court under its judgment and order dated 23rd December, 1996. Feeling aggrieved, the plaintiffs have preferred the present Revision Application.

Pending this Revision Application, the impugned order of the lower appellate Court has been stayed i.e. the order of the trial Court made below Application Ex.5 has operated pending this Revision Application. In other words, through out the pendency of the suit, the injunction as aforesaid has operated against the defendant respondent. Both the learned advocates agree that the trial has commenced and the evidence is being recorded by the trial Court.

In above view of the matter, the injunction which has operated pending the suit need not be interfered with when the trial has already commenced. Hence, the Revision Application is allowed. The impugned judgment and order dated 23rd December, 1996 passed by the learned 2nd Extra Assistant Judge, Kheda in Civil Misc. Appeal No.80/1996 is quashed and set aside. The order dated 20th February, 1996 by the learned Civil Judge (S.D.), Nadiad made below Application Ex.5 in Civil Suit No.31/1995 is confirmed. Rule is made absolute. The parties shall bear their own costs.

( Ms. R.M. Doshit, J. )

/sakkaf